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18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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23 Attorney for Defendant  
24 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

25 **UNITED STATES DISTRICT COURT**  
26 **NORTHERN DISTRICT OF CALIFORNIA**

27 CALIFORNIA SPORTFISHING  
28 PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.  
WASTE MANAGEMENT OF ALAMEDA  
COUNTY, INC., a corporation.

Defendant.

Case No. 3:08-cv-03497-SC

STIPULATION TO VACATE FUTURE  
DATES AND RETAIN JURISDICTION;  
[PROPOSED] ORDER

Judge: Hon. Samuel Conti

## I. REQUEST AND STIPULATION RE DISMISSAL

WHEREAS, Plaintiff California Sportfishing Protection Alliance (“CSPA”) and Defendant Waste Management of Alameda County, Inc. (“WMAC”) (collectively the “Parties”) entered into a Consent Decree in Civil Case No. 3:08-cv-03497-SC on February 11, 2009;

WHEREAS, the Consent Decree was signed by the Honorable Samuel Conti on April 21, 2009, a copy of which is incorporated herein and attached as Exhibit 1 to this stipulation and proposed order;

WHEREAS, Section H of the Consent Decree provides that the Consent Decree shall terminate on December 15, 2011;

WHEREAS, Section J(2) of the Consent Decree provides a mechanism for the Parties to settle dispute resolution procedures in front of Judge Conti;

WHEREAS, Section K of the Consent Decree provides that this Court shall retain jurisdiction to enforce the terms and conditions of the Consent Decree until the Consent Decree terminates after all terms and conditions specified within the Consent Decree have been satisfied;

NOW THEREFORE, the Parties jointly stipulate as follows:

1. The Parties request that this Court vacate all future dates; and,
2. The Parties request that this Court retain jurisdiction over this action to allow the Parties to contact the Court for dispute resolution until the termination of the Consent Decree on December 15, 2011 or until all terms and conditions specified within the Consent Decree have been satisfied.

Dated: May 4, 2009

Respectfully submitted,

LOZEAU DRURY LLP

By: /s/ *Douglas J. Chermak*

DOUGLAS J. CHERMAK  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

1 REED SMITH LLP  
2  
3 By: /s/ John Lynn Smith (as authorized on 5/4/09)  
4 JOHN LYNN SMITH  
5 Attorneys for Defendant  
6 WASTE MANAGEMENT OF ALAMEDA  
7 COUNTY, INC.  
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1           **II. [PROPOSED] ORDER**

2           Based on the above stipulation of the Parties, IT IS HEREBY ORDERED that:

3           1. All future dates in Civil Case No. 3:08-cv-03497-SC be vacated; and,

4           2. This Court shall retain jurisdiction over the above-entitled action to allow the parties  
5           to contact the Court for dispute resolution until the termination of the Consent Decree  
6           on December 15, 2011 or until all terms and conditions specified within the Consent  
7           Decree have been satisfied.

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9           Dated: May 4, 2009



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# EXHIBIT 1

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19 Attorneys for Defendant  
20 Waste Management Of Alameda County, Inc.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 CALIFORNIA SPORTFISHING PROTECTION  
24 ALLIANCE,

No.: 008-03497

**CONSENT DECREE**

Honorable Samuel Conti

25 Plaintiff,

26 vs.

27 WASTE MANAGEMENT OF ALAMEDA  
COUNTY, INC.,

28 Defendant.

1       **A. BACKGROUND**

2

3       1. California Sportfishing Protection Alliance (“CSPA”) is a 501(c)(3) non-profit, public  
 4 benefit corporation organized under the laws of the State of California, dedicated to the protection,  
 5 enhancement, and restoration of the San Francisco Bay and other California waters. Bill Jennings is  
 6 the Chairperson of CSPA and a member of CSPA.

7

8       2. Waste Management of Alameda County, Inc. (“WMAC”) is a corporation organized  
 9 under the laws of the State of California that owns and operates a transfer station for commercial and  
 10 municipal solid waste at 2615 Davis Street in San Leandro, California (the “Facility”) pursuant to  
 11 State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant  
 12 Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for  
 13 Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities  
 14 (hereinafter, the “General Permit”). A map of the Facility is attached hereto as Exhibit A and  
 15 incorporated by reference. CSPA and WMAC shall be referred to herein collectively as the  
 16 “Parties” and each individually as a “Party.”

17

18       3. On April 21, 2008, CSPA provided WMAC with a Notice of Violation and Intent to  
 19 File Suit (“60-Day Notice Letter”) under Section 505 of the Federal Water Pollution Control Act  
 20 (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365.

21

22       4. On July 21, 2008, CSPA filed its Complaint in the United States District Court for the  
 23 Northern District of California against WMAC (California Sportfishing Protection Alliance v. Waste  
 24 Management of Alameda County, Inc., Case No. 3:08-cv-03497-SC). A true and correct copy of the  
 25 Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by  
 26 reference.

27

28       5. WMAC denies any and all of CSPA’s claims in its 60-Day Notice Letter and

1 Complaint.

2

3       6. CSPA and WMAC, through their authorized representatives and without either  
 4 adjudication of CSPA's claims or admission by WMAC of any alleged violation or other  
 5 wrongdoing, have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter and  
 6 Complaint through settlement and avoid the cost and uncertainties of further litigation.

7

8       7. The Parties wish to compromise, resolve, settle, and terminate any and all disputes or  
 9 claims between them as to the allegations set forth in the 60-Day Notice Letter and Complaint and as  
 10 a result consent to the entry of this Consent Decree and Order without trial of any issues and  
 11 stipulate that in order to settle the Claims, this Consent Decree and order should be entered. This  
 12 Consent Decree constitutes a settlement of disputed claims. It is not an admission of jurisdiction  
 13 over or liability for the allegations set forth in the 60-Day Notice Letter and Complaint or an  
 14 admission of any fact. Should this proposed Consent Decree fail to be entered for any reason, this  
 15 proposed Consent Decree, and any statement or other provision contained in this proposed Consent  
 16 Decree shall have no legal effect and shall not be used for any purpose in any subsequent proceeding  
 17 in this or any other litigation.

18

19       8. The Parties agree, and this Court by entering this Consent Decree finds, that this  
 20 Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will  
 21 avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair,  
 22 reasonable, and in the public interest.

23

24 THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED,  
 25 ADJUDGED AND DECREED:

26

27

28

1           **B. COURT'S AUTHORITY**

2  
3           This Court has authority under the Clean Water Act, 33 U.S.C. § 1365 to enter and  
4 enforce this Consent Decree.

5  
6           **C. INJUNCTIVE RELIEF**

7  
8           **1. Effective Date.**

9  
10          This Consent Decree shall be effective upon the date this Consent Decree is entered  
11 by the Court (the "Effective Date"). Pursuant to 33 U.S.C. § 1365(c)(3), the Court shall not enter  
12 this Consent Decree until 45 days after receipt of a copy of the proposed Consent Decree by the  
13 Attorney General and the Administrator of the U.S. Environmental Protection Agency.

14  
15          **2. Compliance with General Permit.**

16  
17          WMAC agrees to operate the Facility in compliance with the applicable requirements  
18 of the General Permit and Clean Water Act.

19  
20          **3. Implemented Storm Water Controls**

21  
22          WMAC shall maintain in good working order all storm water collection and treatment  
23 systems currently installed or to be installed pursuant to this Consent Decree, including but not  
24 limited to, existing housekeeping measures.

25  
26          **4. Additional Best Management Practices**

27  
28          WMAC shall implement the following best management practices ("BMPs") to

1 improve the storm water pollution prevention measures at the drop inlets and outfalls at the Facility;

2  
 3       a. Within TEN (10) calendar days after the Effective Date, WMAC shall  
 4 improve the effectiveness of the straw wattles surrounding the drop inlets in the unpaved areas of the  
 5 Facility by digging trenches for the wattles and anchoring the wattles into the ground.

6  
 7       b. Within TEN (10) calendar days after the Effective Date, WMAC shall install  
 8 catch basin filters or bag inserts on all drop inlets and catch basins at the Facility. WMAC shall use  
 9 appropriate mesh sizing to catch finer grain materials. Each filter shall be replaced or maintained as  
 10 needed.

11  
 12       c. Within TEN (10) calendar days after the Effective Date, WMAC shall design  
 13 removable metal covers for all drop inlets at the Facility to prevent the accumulation of dirt, leaves,  
 14 sediment, and other similar materials. The covers shall be placed over all drop inlets on or before  
 15 July 1st at the end of each rainy season, subsequent to appropriate maintenance of the filters  
 16 described above. The covers shall be removed prior to the first rain event of the subsequent rainy  
 17 season. The covers shall be fitted to prevent such materials from entering the drop inlets and  
 18 designed such that the covers will remain firmly in place while there is normal activity at the  
 19 Facility.

20  
 21       d. Within TEN (10) calendar days after the Effective Date, WMAC shall install  
 22 curbing and shall pave the road near Discharge Point #5 to prevent flows from discharging to the  
 23 gully. By November 1, 2009, WMAC shall fill the gully in order to prevent flows from discharging  
 24 through the gully near Discharge Point #5.

25  
 26       e. WMAC shall take the following actions to upgrade the storm water treatment  
 27 system at the Facility's outfalls and agrees that the treatment system shall be designed to handle up  
 28 to a 15-year, 24-hour storm event.

(i) By June 1, 2009, WMAC shall complete an engineering feasibility study to evaluate and select a long-term treatment alternative(s) for reducing total suspended solids ("TSS") and other storm water pollutants below the bench mark values. This study will include an alternative to treat the storm water discharged at the Recycling Center outfall (Discharge Point #3). The study will evaluate treatment systems designed to treat a 15-year, 24-hour storm event.

(ii) By August 1, 2009, WMAC shall complete design plans and specifications for the selected alternative(s).

(iii) By October 1, 2009, WMAC shall implement the selected alternative(s).

## **5. Increased Housekeeping Measures**

WMAC shall institute the following accelerated cleaning schedule at the Facility:

a. WMAC will make the following improvements to its sweeping program:

(i) Within TEN (10) calendar days after the Effective Date, WMAC shall update the sweeping maps from the Facility and include a copy of the maps in the Facility's Storm Water Pollution Prevention Plan ("SWPPP").

(ii) Beginning TEN (10) calendar days after the Effective Date, WMAC shall conduct mechanical sweeping of the entire Facility each weekday (excluding holidays).

(iii) All sweeping activities performed at the Facility shall be recorded in a sweeping log. A sample blank log form will be included in the Facility's Annual Report and the Storm Water Pollution Prevention Plan.

(iv) Within TEN (10) calendar days after the Effective Date, WMAC shall institute a training program for the sweeper operators with an evaluation component.

(v) Within THIRTY (30) calendar days after the Effective Date, WMAC shall complete an evaluation of sweepers, including regenerative sweepers, to determine which sweeper type is best suited for the Facility.

(vi) Within SIXTY (60) calendar days after the completion of the sweeper evaluation described in the preceding subsection and only if a new sweeper is identified as appropriate, WMAC shall acquire and begin using the new sweeper.

(vii) At the end of the 2008-2009 rainy season, in the written memorandum described below in Section C.8, WMAC shall evaluate the feasibility of installing a GPS unit into the sweeper with a visual display recording the sweeper path to ensure that the entire Facility is swept each day.

23                   b. Within THIRTY (30) calendar days after the Effective Date, WMAC shall  
24 implement a program for cleaning out the drop inlet filters, including weekly cleanouts during the  
25 rainy season. WMAC shall monitor the filters for damage and replace as necessary.

27 c. Within TEN (10) calendar days after the Effective Date, WMAC shall  
28 institute appropriate BMPs to avoid storm drains when spraying water for dust control.

1           **6. Monitoring**

2

3           WMAC agrees to perform the monitoring described herein during the 2008-2009,  
 4         2009-2010, and 2010-2011 rainy seasons in addition to the minimum monitoring requirements of the  
 5         General Permit.

6

7           a.       WMAC shall monitor all storm water discharge locations. For each discharge  
 8         location, monitoring samples shall be collected at a point downstream from any management  
 9         measures and treatment systems. Monitoring shall be performed consistent with the monitoring  
 10        requirements of the General Permit.

11

12           b.       During the 2008-2009 and 2009-2010 rainy seasons, WMAC shall sample and  
 13         analyze storm water discharges from four (4) qualifying storm events that result in discharge  
 14         consistent with the requirements and protocols set forth in the General Permit. During the 2010-  
 15        2011 rainy season, WMAC shall sample and analyze storm water discharges from three (3)  
 16        qualifying storm events that result in discharge consistent with the requirements and protocols set  
 17        forth in the General Permit.

18

19           c.       WMAC shall analyze each storm water sample taken in accordance with the  
 20         General Permit and this Consent Decree for, at a minimum, TSS, pH, oil and grease or total organic  
 21         carbon, electrical conductivity, chemical oxygen demand, iron, zinc, copper, aluminum, lead, and  
 22         nitrate plus nitrite as nitrogen (N+N). (WMAC shall not be required to sample for N+N if WMAC  
 23         and its analytical laboratory cannot meet the required 48-hour holding time for analysis. Generally,  
 24         samples taken on a weekday, but prior to 2:00 p.m. on Thursday, can meet the required holding  
 25         times.) WMAC may eliminate one or more of these pollutants from future sampling analysis if  
 26         allowed by Section B.5.c. of the General Permit.

27

28           d.       WMAC shall conduct monthly visual observations of Discharge Points 2, 3, 4,

1 and 5 for at least one qualifying rain event per month (unless no such qualifying event occurs) that  
 2 results in any discharge from the Facility. Monitoring of Discharge Points 4 and 5 will only be  
 3 performed if the discharge points are visible. WMAC shall maintain a written log describing these  
 4 observations.

5

6           **7. Monitoring Results**

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8           Results from WMAC's sampling and analysis during the term of this Consent Decree  
 9 shall be provided to CSPA within 30 calendar days of receipt of the sampling results by WMAC or  
 10 its counsel.

11

12           **8. Meet and Confer Regarding Exceedance of Levels of Potential Concern**

13

14           If analytical results of storm water samples taken by WMAC during the 2008-2009,  
 15 2009-2010, or the 2010-2011 rainy seasons indicate that storm water discharges from the Facility  
 16 exceed the following levels of potential concern – Total Suspended Solids: 100 mg/L; Specific  
 17 Conductance: 200 µmhos/cm; Oil & Grease: 15 mg/L or Total Organic Carbon: 120 mg/L; pH: 6.0-  
 18 9.0 s.u.; Aluminum: 0.75 mg/L; Zinc: 0.117 mg/L; Iron: 1.0 mg/L; Copper: 0.0636 mg/L; Lead:  
 19 0.0816 mg/L; Chemical Oxygen Demand: 120 mg/L; and Nitrate + Nitrite as Nitrogen: 0.68 mg/L.  
 20 WMAC agrees to take additional feasible measures aimed at reducing pollutants in the Facility's  
 21 storm water to levels at or below these levels.

22

23           In furtherance of that objective, WMAC shall prepare a written statement  
 24 ("Memorandum") discussing:

25

26           a. any exceedance or exceedances;

27

28           b. an explanation of the possible cause(s) and/or source(s) of any exceedance;

1 and

2  
3 c. additional feasible best management practices, if any, that will be taken to  
4 further reduce the possibility of future exceedance(s).

5  
6 Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later  
7 than July 15th following the conclusion of each rainy season.

8  
9 Any additional measures set forth in the Memorandum shall be implemented as soon  
10 as practicable, but not later than 21 calendar days from the due date of the Memorandum, except  
11 where 1) structural changes require longer than 21 calendar days to complete; 2) weather-related  
12 conditions render immediate implementation infeasible; or 3) the Parties agree in writing to defer  
13 implementation of specific measures in order to effectively meet and confer in accordance with  
14 Section C.8. Within thirty (30) calendar days of implementation, WMAC's SWPPP shall be  
15 amended to include all additional BMP measures designated in the Memorandum.

16  
17 Upon receipt of the Memorandum, CSPA may review and comment on any additional  
18 measures. If requested by CSPA within 21 days of receipt of such Memorandum, CSPA and  
19 WMAC shall meet and confer and conduct a site inspection within 60 days after the due date of the  
20 Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures  
21 to improve the quality of the Facility's storm water to levels at or below the Levels of Potential  
22 Concern. If within 21 days of the parties meeting and conferring, the Parties do not agree on the  
23 adequacy of the additional measures set forth in the Memorandum, the Parties may agree to seek a  
24 settlement conference with the Judge assigned to this action pursuant to Section J.2 below. If the  
25 Parties fail to reach agreement on additional measures, CSPA may bring a motion before the Judge  
26 consistent with Section J.2 below. If CSPA does not request a meet and confer regarding the  
27 Memorandum within the 21 day comment period provided for in this paragraph, CSPA shall waive  
28 any right to object to such Memorandum pursuant to this Consent Decree.

1           Any concurrence or failure to object by CSPA with regard to the reasonableness of  
 2 any additional measures implemented by WMAC shall not be deemed to be an admission of the  
 3 adequacy of such measures should they fail to bring the Facility's storm water into compliance with  
 4 applicable water quality criteria.

5

6           In addition to any site inspections conducted as part of meeting and conferring on  
 7 additional measures set forth above, WMAC shall permit representatives of CSPA to perform one  
 8 (1) additional site visit to the Facility per year during normal daylight business hours during the term  
 9 of this Consent Decree; provided that CSPA provides WMAC via e-mail with at least one week prior  
 10 written notice.

11

## 12           9.       Provision of Documents and Reports

13

14           During the life of this Consent Decree, WMAC shall provide CSPA with a copy of all  
 15 documents submitted to the Regional Board or the State Water Resources Control Board ("State  
 16 Board") concerning the Facility's storm water discharges, including but not limited to all documents  
 17 and reports submitted to the Regional Board and/or State Board as required by the General Permit.  
 18 Such documents and reports shall be mailed to CSPA contemporaneously with submission to such  
 19 agency. WMAC also shall provide CSPA a copy of all documents referenced in this agreement,  
 20 including but not limited to logs, photographs, or analyses, within seven (7) calendar days of a  
 21 written request (via e-mail or regular mail) by CSPA.

22

## 23           10.      Amendment of SWPPP

24

25           Within sixty (60) calendar days of the Effective Date of this Consent Decree, WMAC  
 26 shall amend the Facility's Storm Water Pollution Prevention Plan ("SWPPP") to incorporate all  
 27 changes, improvements, sample log forms, and best management practices set forth in or resulting  
 28 from this Consent Decree. WMAC shall amend the SWPPP to reflect that water used on material for

1 dust-control is not an authorized non-storm water discharge and that such spraying should seek to  
 2 avoid all storm drains. In addition, the Facility shall amend the maps in the SWPPP to clearly  
 3 delineate the Facility boundaries, direction of storm water flow and runoff within each drainage area,  
 4 indicate all drop inlet locations and which inlets go to the sanitary sewer and which are now defunct  
 5 or blocked, identify all areas of soil erosion, and indicate location of non-storm water discharge  
 6 points. The Facility shall ensure that all maps, tables, and text comply with the requirements of the  
 7 General Permit. A copy of the amended SWPPP shall be provided to CSPA within thirty (30)  
 8 calendar days of completion.

9

10 **D. MITIGATION PAYMENT**

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12           In recognition of the good-faith efforts by WMAC to comply with all aspects of the  
 13 General Permit and the Clean Water Act, and in lieu of payment by WMAC of any penalties, which  
 14 may have been assessed in this action if it had proceeded to trial, WMAC agrees to pay the sum of  
 15 FIFTY THOUSAND DOLLARS (\$50,000) to the Rose Foundation for Communities and the  
 16 Environment (“Rose Foundation”) for the sole purpose of providing grants to environmentally  
 17 beneficial projects within the San Francisco Bay-Delta Estuary, relating to water quality  
 18 improvements in the area. Payment shall be made by WMAC within THIRTY (30) calendar days of  
 19 the Effective Date. Payment by WMAC shall be made in the form of a single check payable to the  
 20 “Rose Foundation.”

21

22 **E. ATTORNEY'S FEES AND COSTS; COMPLIANCE OVERSIGHT COSTS**

23

24           As reimbursement for CSPA’s investigative, expert and attorneys’ fees and costs,  
 25 WMAC shall pay CSPA the sum of THIRTY THOUSAND DOLLARS (\$30,000). Payment shall  
 26 be made by WMAC within THIRTY (30) calendar days of the Effective Date. Payment by WMAC  
 27 to CSPA shall be made in the form of a single check payable to “Lozeau Drury LLP Attorney-Client  
 28 Trust Account,” and shall constitute full payment for all costs of litigation, including investigative,

1 expert and attorneys' fees and costs incurred by CSPA that have or could have been claimed in  
 2 connection with CSPA's claims, up to and including the Effective Date of this Consent Decree.  
 3

4 As reimbursement for CSPA's future costs that will be incurred in order for CSPA to  
 5 monitor WMAC's compliance with this Consent Decree and to effectively meet and confer and  
 6 evaluate monitoring results for the Facility, WMAC agrees to pay CSPA the amount of TEN  
 7 THOUSAND DOLLARS (\$10,000) for costs to be incurred in overseeing the implementation of this  
 8 Consent Decree. WMAC shall make payment to CSPA within THIRTY (30) calendar days after the  
 9 Effective Date. Payment by WMAC to CSPA shall be made in the form of a check payable to  
 10 "Lozeau Drury LLP Attorney-Client Trust Account."

11

12 **F. RELEASE OF CLAIMS; COVENANT NOT TO SUE**

13

14 In consideration of the above, and except as otherwise provided by this Consent  
 15 Decree, the Parties hereby forever and fully release each other and their respective successors,  
 16 assigns, officers, agents, employees, and all persons, firms and corporations having an interest in  
 17 them, from any and all claims and demands of any kind, nature, or description whatsoever, and from  
 18 any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which  
 19 the Parties have against each other arising from CSPA's allegations and claims as set forth in the 60-  
 20 Day Notice Letter and Complaint up to and including the Termination Date of this Consent Decree.

21

22 The Parties acknowledge that they are familiar with section 1542 of the California  
 23 Civil Code, which provides:

24

25 A general release does not extend to claims which the creditor does not  
 26 know or suspect to exist in his or her favor at the time of executing the  
 27 release, which if known by him or her must have materially affected his or  
 28 her settlement with the debtor.

1                 The Parties hereby waive and relinquish any rights or benefits they may have under  
 2 California Civil Code section 1542 with respect to any other claims against each other arising from,  
 3 or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to  
 4 and including the Termination Date of this Consent Decree.

5  
 6                 For the period beginning on the Effective Date and ending on December 15, 2011,  
 7 CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor any  
 8 organization under the control of CSPA, its officers, executive staff, or members of its governing  
 9 board, will file any lawsuit against WMAC seeking relief for alleged violations of the Clean Water  
 10 Act or violations of the General Permit. CSPA further agrees that, beginning on the Effective Date  
 11 and ending on December 15, 2011, CSPA will not support other lawsuits, by providing financial  
 12 assistance, personnel time or other affirmative actions, against WMAC that may be proposed by  
 13 other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to  
 14 challenge WMAC's compliance with the Clean Water Act or the General Permit.

15  
 16 **G. NOTICE TO THE FEDERAL GOVERNMENT**

17  
 18                 WMAC shall submit this Consent Decree to the U.S. EPA and the U.S. Department  
 19 of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5)  
 20 calendar days after filing of this Consent Decree with the Court for review consistent with 33 U.S.C.  
 21 § 1365(c)(3). The Agencies' review period expires forty-five (45) calendar days after receipt of the  
 22 Consent Decree by both Agencies, as evidenced by the return receipts, copies of which shall be  
 23 provided to CSPA upon receipt by WMAC.

24  
 25 **H. TERMINATION DATE OF CONSENT DECREE**

26  
 27                 This Consent Decree shall terminate on December 15, 2011.

1       **I. BREACH OF CONSENT DECREE; IMPOSSIBILITY OF PERFORMANCE**

2

3                  Where implementation of the actions set forth in this Consent Decree, within the  
 4 deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of  
 5 the Parties, the Party who is unable to comply shall notify the other in writing within seven (7)  
 6 calendar days of the date that the failure becomes apparent, and shall describe the reason for the non-  
 7 performance. The Parties agree to meet and confer in good faith concerning the non-performance  
 8 and, where the Parties concur that the non-performance was or is impossible, despite the timely good  
 9 faith efforts of one of the Parties, new performance deadlines shall be established. In the event that  
 10 the Parties cannot timely agree upon the terms of such a stipulation, either of the Parties shall have  
 11 the right to invoke the dispute resolution procedure described herein.

12

13       **J. GENERAL PROVISIONS**

14

15                  1.        No Admission or Finding. Neither this Consent Decree nor any payment  
 16 pursuant to the Consent Decree shall constitute evidence or be construed as a finding, adjudication,  
 17 or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation  
 18 of any law, rule or regulation. However, this Consent Decree and/or any payment pursuant to the  
 19 Consent Decree may constitute evidence in actions seeking compliance with this Consent Decree.

20

21                  2.        Dispute Resolution Procedures. Except as specifically noted herein, any  
 22 dispute with respect to any of the provisions of this Consent Decree shall be resolved through the  
 23 following procedure. The Parties agree to first meet and confer to resolve any dispute arising under  
 24 this Consent Decree. In the event that such disputes cannot be resolved through this meet and confer  
 25 process, the Parties agree to request a settlement meeting before the Judge assigned to this action. In  
 26 the event that the Parties cannot resolve the dispute by the conclusion of the settlement meeting with  
 27 the Judge, the Parties agree that either Party may submit the dispute via motion to the Judge.

28

1           In resolving any dispute arising from this Consent Decree, the Judge shall have discretion  
 2 to award attorneys' fees and costs to either Party. The relevant provisions of the then-applicable  
 3 Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of  
 4 fees and costs in connection with the resolution of any disputes before the Judge. The Judge shall  
 5 award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof.  
 6 The Parties agree to file any waivers necessary for the Judge to preside over any settlement  
 7 conference and motion practice.

8  
 9           3.     Construction. The language in all parts of this Consent Decree shall be  
 10 construed according to its plain and ordinary meaning, except as to those terms defined by law, in  
 11 the General Permit, Clean Water Act or specifically herein.

12  
 13           4.     Choice of Law. This Consent Decree shall be governed by the laws of the  
 14 United States, and where applicable, the laws of the State of California.

15  
 16           5.     Severability. In the event that any provision, section, or sentence of this  
 17 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions  
 18 shall not be adversely affected.

19  
 20           6.     Correspondence. All notices required herein or any other correspondence  
 21 pertaining to this Consent Decree shall be sent by regular, certified, or overnight mail as follows:

22  
 23           If to CSPA:

24  
 25           Bill Jennings, Chairman  
 26           California Sportfishing Protection Alliance  
 27           3536 Rainier Road  
 28           Stockton, CA 95204  
 Tel: (209) 464-5067  
 deltakelp@aol.com

1 And to:

2 Michael R. Lozeau  
3 Lozeau Drury LLP  
4 1516 Oak Street, Suite 216  
5 Alameda, CA 94501  
6 Tel: (510) 749-9102  
7 michael@lozeaudrury.com

8 If to WMAC:

9  
10 Waste Management of Alameda County, Inc.  
11 Attention: District Manager  
12 Davis Street Transfer Station  
13 2615 Davis Street  
14 San Leandro, California 94577

15 And to:

16 John Lynn Smith  
17 Reed Smith LLP  
18 1999 Harrison Street  
19 Suite 2200  
20 Oakland, CA 94612  
21 Tel: (510) 466-6778  
22 jlsmith@reedsmith.com

23 Notifications of communications shall be deemed submitted on the date that they are  
24 e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery  
25 service. Any change of address or addresses shall be communicated in the manner described above  
26 for giving notices.

27  
28 7. Counterparts. This Consent Decree may be executed in any number of  
counterparts, all of which together shall constitute one original document. Telecopied, scanned  
.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed  
counterparts of this Consent Decree.

1           8.     Assignment. Subject only to the express restrictions contained in this Consent  
2 Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the  
3 benefit of and be binding upon the Parties, and their successors and assigns.  
4

5           9.     Modification of the Agreement. This Consent Decree, and any provisions  
6 herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed  
7 by the Parties.  
8

9           10.    Full Settlement. This Consent Decree constitutes a full and final settlement of  
10 this matter. It is expressly understood and agreed that the Consent Decree has been freely and  
11 voluntarily entered into by the Parties with and upon advice of counsel.  
12

13           11.    Integration Clause. This is an integrated Consent Decree. This Consent  
14 Decree is intended to be a full and complete statement of the terms of the agreement between the  
15 Parties and expressly supersedes any and all prior oral or written agreements covenants,  
16 representations and warranties (express or implied) concerning the subject matter of this Consent  
17 Decree.  
18

19           12.    Authority. The undersigned representatives for CSPA and WMAC each  
20 certify that he/she is fully authorized by the Party whom he/she represents to enter into the terms and  
21 conditions of this Consent Decree.  
22

23           **K. RETENTION OF JURISDICTION**  
24

25           Subject to the provisions of this Consent Decree, this Court shall retain jurisdiction to  
26 enforce the terms and conditions of this Consent Decree. This Consent Decree shall terminate after  
27 all terms and conditions specified within this Consent Decree have been satisfied.  
28

1 SO AGREED AND STIPULATED:

2 Dated: 5 February 2009

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

3 By Bill Jennings Executive Director  
(Title)

4 Dated: 11 February 2009

5 WASTE MANAGEMENT OF ALAMEDA  
6 COUNTY, INC.

7 By: Bob Lutz 2/11/09  
(Title)  
8 ASSISTANT SECRETARY

9 APPROVED AS TO FORM:

10 LOZEAU DRURY LLP

11 Michael R. Lozeau  
12 Michael R. Lozeau  
13 Attorneys for Plaintiff

14 REED SMITH LLP

15 John Lynn Smith  
16 Attorneys for Defendant

17 IT IS SO ORDERED.

18 Dated and entered into on April 21, 2009

19 Samuel J. Tinsley

20 UNITED STATES DISTRICT JUDGE

21 US ACTIVE-101130731

22

23

24

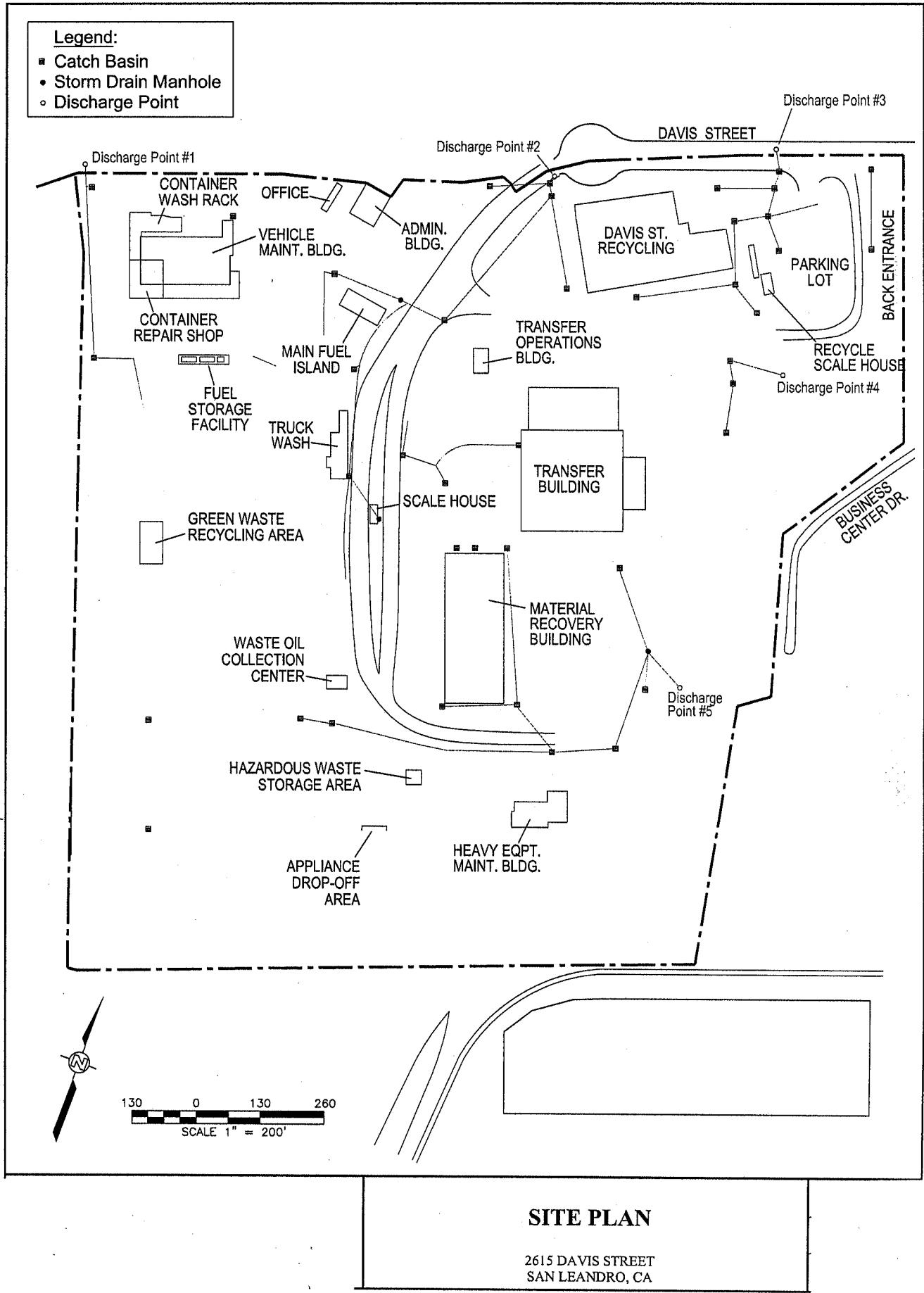
25

26

27

28

# EXHIBIT A



# EXHIBIT B

1 MICHAEL R. LOZEAU (State Bar No. 142893)  
2 DOUGLAS J. CHERMAK (State Bar No. 233382)  
3 Lozeau Drury LLP  
4 1516 Oak Street, Suite 216  
5 Alameda, CA 94501  
Tel: (510) 749-9102  
Fax: (510) 749-9103 (fax)  
E-mail: michael@lozeaudrury.com  
doug@lozeaudrury.com

6 ANDREW L. PACKARD (State Bar No. 168690)  
7 MICHAEL P. LYNES (State Bar No. 230462)  
8 Law Offices of Andrew L. Packard  
9 319 Pleasant Street  
Petaluma, CA 94952  
Tel: (707) 763-7227  
Fax: (415) 763-9227  
10 E-mail: andrew@packardlawoffices.com

**11** Attorneys for Plaintiff  
**CALIFORNIA SPORTFISHING PROTECTION ALLIANCE**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE**, a non-profit  
corporation,

17 Plaintiff,

18 VS.

**19 WASTE MANAGEMENT OF  
ALAMEDA COUNTY, INC., a  
corporation.**

**31**      Defendant.

Case No. 3-05497

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

22 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its  
23 counsel, hereby alleges:

## 1. INTRODUCTION

25       1. This complaint seeks relief for Defendant's discharges of polluted storm water  
26 and non-storm water pollutants from Defendant's facility ("the Facility") into the waters of  
27 the United States in violation of the Act and the State of California's "Waste Discharge

1 Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities  
 2 Excluding Construction Activities," State Water Resources Control Board ("State Board")  
 3 Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ  
 4 and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System  
 5 ("NPDES") Permit No. CAS000001, (hereinafter "the Order" or "Permit"). Defendant's  
 6 violations of the discharge, treatment technology, monitoring requirements, and other  
 7 procedural and substantive requirements of the Permit and the Act are ongoing and  
 8 continuous.

9       2. The failure on the part of persons and facilities such as Defendant and its  
 10 industrial facility to comply with storm water requirements is recognized as a significant  
 11 cause of the continuing decline in water quality of the San Francisco Bay ("Bay") and other  
 12 area receiving waters. The general consensus among regulatory agencies and water quality  
 13 specialists is that storm pollution amounts to a substantial portion of the total pollution  
 14 entering the aquatic environment each year. With every rainfall event, millions of gallons of  
 15 polluted rainwater originating from industries within the surrounding area pour into the Bay.

16       3. The continuing decline in water quality in the San Francisco Bay is a matter of  
 17 serious public concern. Data gathered by CalFed, a coalition of fifteen state and federal  
 18 agencies analyzing water allocation issues, has confirmed that the Bay is a heavily polluted  
 19 water body. The entire Bay and all of its major tributaries have been identified by the State  
 20 Board, the Regional Board, and EPA as impaired water bodies under Section 303(d) of the  
 21 Clean Water Act. 33 U.S.C. § 1313(d).

## 22       II. JURISDICTION AND VENUE

23       4. This is a civil suit brought under the citizen suit enforcement provisions of the  
 24 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or  
 25 "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter  
 26 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28  
 27 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is  
 28 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of

1 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§  
 2 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

3       5. On or about April 21, 2008, Plaintiff provided notice of Defendant's violations  
 4 of the Act, and of its intention to file suit against Defendant, to the Defendant; the  
 5 Administrator of the United States Environmental Protection Agency ("EPA"); the  
 6 Administrator of EPA Region IX; the Executive Director of the State Water Resources  
 7 Control Board ("State Board"); and to the Executive Officer of the Regional Water Quality  
 8 Control Board, San Francisco Bay Region ("Regional Board"). A true and correct copy of  
 9 CSPA's notice letter is attached as Exhibit A, and is incorporated by reference.

10      6. More than sixty days have passed since notice was served on Defendant and  
 11 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
 12 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
 13 court action to redress the violations alleged in this complaint. This action's claim for civil  
 14 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,  
 15 33 U.S.C. § 1319(g).

16      7. Venue is proper in the Northern District of California pursuant to Section  
 17 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
 18 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in  
 19 Oakland, California because the sources of the violations are located within Alameda  
 20 County, California.

### 21      III. PARTIES

22      8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
 23 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
 24 California with its main office in Stockton, California. CSPA has approximately 2,000  
 25 members who live, recreate and work in and around waters of the State of California,  
 26 including the San Francisco Bay. CSPA is dedicated to the preservation, protection, and  
 27 defense of the environment, the wildlife and the natural resources of all waters of California.  
 28 To further these goals, CSPA actively seeks federal and state agency implementation of the

1 Act and other laws and, where necessary, directly initiates enforcement actions on behalf of  
 2 itself and its members.

3       9. Members of CSPA reside in and around the Bay and enjoy using the Bay for  
 4 recreation and other activities. Members of CSPA use and enjoy the waters into which  
 5 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged.  
 6 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife  
 7 and engage in scientific study including monitoring activities, among other things.  
 8 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to  
 9 such threats and impairments. Thus, the interests of CSPA's members have been, are being,  
 10 and will continue to be adversely affected by Defendant's failure to comply with the Clean  
 11 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused  
 12 by Defendant's activities.

13       10. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
 14 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. (hereinafter "Defendant" or  
 15 "Waste Management") is a corporation organized under the laws of California. Defendant  
 16 Waste Management operates the Davis Street Transfer Station, a transfer station for  
 17 municipal and solid waste, in San Leandro, California.

18 **IV. STATUTORY BACKGROUND**

19       11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
 20 pollutant into waters of the United States, unless such discharge is in compliance with  
 21 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
 22 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
 23 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

24       12. Section 402(p) of the Act establishes a framework for regulating municipal and  
 25 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States  
 26 with approved NPDES permit programs are authorized by Section 402(p) to regulate  
 27 industrial storm water discharges through individual permits issued to dischargers or through  
 28 the issuance of a single, statewide general permit applicable to all industrial storm water

1 dischargers. 33 U.S.C. § 1342(p).

2       13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
 3 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
 4 NPDES permits in California.

5       14. The State Board elected to issue a statewide general permit for industrial storm  
 6 water discharges. The State Board issued the General Permit on or about November 19,  
 7 1991, modified the General Permit on or about September 17, 1992, and reissued the  
 8 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water  
 9 Act, 33 U.S.C. § 1342(p).

10      15. In order to discharge storm water lawfully in California, industrial dischargers  
 11 must comply with the terms of the General Permit or have obtained and complied with an  
 12 individual NPDES permit. 33 U.S.C. § 1311(a).

13      16. The General Permit contains several prohibitions. Effluent Limitation B(3) of  
 14 the General Permit requires dischargers to reduce or prevent pollutants in their storm water  
 15 discharges through implementation of the Best Available Technology Economically  
 16 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional  
 17 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include  
 18 both nonstructural and structural measures. General Permit, Section A(8). Discharge  
 19 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-  
 20 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.  
 21 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to  
 22 any surface or ground water that adversely impact human health or the environment.  
 23 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that  
 24 cause or contribute to an exceedance of any applicable water quality standards contained in a  
 25 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

26      17. EPA has established Parameter Benchmark Values as guidelines for  
 27 determining whether a facility discharging industrial storm water has implemented the  
 28 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established

1 Parameter Benchmark Values for the following parameters, among others: total suspended  
 2 solids – 100 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; zinc –  
 3 0.117 mg/L; lead – 0.0816 mg/L; oil & grease – 15 mg/L; chemical oxygen demand – 120  
 4 mg/L. The California State Water Resources Control Board has proposed a Benchmark  
 5 Value for electrical conductance of 200  $\mu\text{mhos}/\text{cm}$ .

6       18. In addition to absolute prohibitions, the General Permit contains a variety of  
 7 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
 8 or having the potential to discharge, storm water associated with industrial activity that have  
 9 not obtained an individual NPDES permit must apply for coverage under the State's General  
 10 Permit by filing a Notice of Intent To Comply ("NOI"). The General Permit requires  
 11 existing dischargers to have filed their NOIs before March 30, 1992.

12       19. Dischargers must develop and implement a Storm Water Pollution Prevention  
 13 Plan ("SWPPP"). The SWPPP must describe storm water control equipment and measures  
 14 that comply with the BAT and BCT standards. The General Permit requires that an initial  
 15 SWPPP has been developed and implemented before October 1, 1992. The SWPPP must,  
 16 among other requirements, identify and evaluate sources of pollutants associated with  
 17 industrial activities that may affect the quality of storm and non-storm water discharges from  
 18 the facility and identify and implement site-specific best management practices ("BMPs") to  
 19 reduce or prevent pollutants associated with industrial activities in storm water and  
 20 authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must  
 21 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of  
 22 individuals and their responsibilities for developing and implementing the SWPPP (Section  
 23 A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow  
 24 pattern and nearby water bodies, the location of the storm water collection, conveyance and  
 25 discharge system, structural control measures, impervious areas, areas of actual and potential  
 26 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials  
 27 handled and stored at the site (Section A(5)); a description of potential pollutant sources  
 28 including industrial processes, material handling and storage areas, dust and particulate

1 generating activities, and a description of significant spills and leaks, a list of all non-storm  
 2 water discharges and their sources, and a description of locations where soil erosion may  
 3 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources  
 4 at the Facility and a description of the BMPs to be implemented at the Facility that will  
 5 reduce or prevent pollutants in storm water discharges and authorized non-storm water  
 6 discharges, including structural BMPs where non-structural BMPs are not effective (Section  
 7 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where  
 8 necessary (Section A(9),(10)).

9       20. Section C(11)(d) of the General Permit's Standard Provisions requires  
 10 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).  
 11 Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water  
 12 controls including the preparation of an evaluation report and implementation of any  
 13 additional measures in the SWPPP to respond to the monitoring results and other inspection  
 14 activities.

15       21. The General Permit requires dischargers commencing industrial activities  
 16 before October 1, 1992 to develop and implement an adequate written monitoring and  
 17 reporting program no later than October 1, 1992. Existing facilities covered under the  
 18 General Permit had to implement all necessary revisions to their monitoring programs no  
 19 later than August 1, 1997.

20       22. As part of their monitoring program, dischargers must identify all storm water  
 21 discharge locations that produce a significant storm water discharge, evaluate the  
 22 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
 23 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
 24 conduct visual observations of these discharge locations for at least one storm per month  
 25 during the wet season (October through May) and record their findings in their Annual  
 26 Report. Dischargers must also collect and analyze storm water samples from at least two  
 27 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall  
 28 collect storm water samples during the first hour of discharge from (1) the first storm event

1 of the wet season, and (2) at least one other storm event in the wet season. All storm water  
 2 discharge locations shall be sampled.” Section B(5)(c)(i)-(iii) requires dischargers to sample  
 3 and analyze during the wet season for basic parameters, such as pH, total suspended solids  
 4 (“TSS”), electrical conductance, and total organic content (“TOC”) or oil and grease  
 5 (“O&G”), certain industry-specific parameters, and toxic chemicals and other pollutants  
 6 likely to be in the storm water discharged from the facility. Dischargers must also conduct  
 7 dry season visual observations to identify sources of non-storm water pollution.

8       23. Section B(14) of the General Permit requires dischargers to submit an annual  
 9 report by July 1 of each year to the executive officer of the relevant Regional Board. The  
 10 annual report must be signed and certified by an appropriate corporate officer. Sections  
 11 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include  
 12 in their annual report an evaluation of their storm water controls, including certifying  
 13 compliance with the General Permit. *See also* Sections C(9) and (10) and B(14).

14       24. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
 15 enforcement actions against any “person,” including individuals, corporations, or  
 16 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),  
 17 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §  
 18 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to  
 19 \$27,500 per day (violations from January 30, 1997 through March 15, 2004) and \$32,500  
 20 per day (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of the Act, 33  
 21 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

22       25. The Regional Board has established water quality standards for the San  
 23 Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally  
 24 referred to as the Basin Plan.

25       26. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
 26 waters shall be maintained free of toxic substances in concentrations that are lethal to or that  
 27 produce other detrimental responses in aquatic organisms.”

28       27. The Basin Plan provides that “[w]aters shall not contain suspended material in

1 concentrations that cause nuisance or adversely affect beneficial uses" and that "[w]aters  
 2 shall not contain biostimulatory substances in concentrations that promote aquatic growths to  
 3 the extent that such growths cause nuisance or adversely affect beneficial uses."

4       28. The Basin Plan limits floating material, stating that "[w]aters shall not contain  
 5 floating material, including solids, liquids, foams, and scum, in concentrations that cause  
 6 nuisance or adversely affect beneficial uses."

7       29. The Basin provide provides that "[t]he suspended sediment load and suspended  
 8 sediment discharge rate of surface waters shall not be altered in such a manner as to cause  
 9 nuisance or adversely affect beneficial uses."

10      30. The Basin Plan dictates that "[w]aters shall be free of changes in turbidity that  
 11 cause nuisance or adversely affect beneficial uses."

12      31. The Basin Plan provides that "[w]aters shall not contain oils, greases, waxes,  
 13 or other materials in concentrations that result in a visible film or coating on the surface of  
 14 the water or on objects in the water, that cause nuisance, or that otherwise adversely affect  
 15 beneficial uses."

16      32. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor  
 17 raised above 8.5."

18      33. The Basin Plan establishes a dissolved oxygen standard of 5.0 mg/L for tidal  
 19 waters of San Francisco Bay downstream from the Carquinez Bridge.

20      34. The Basin Plan establishes Marine Water Quality Objectives for the following  
 21 pollutants: zinc – 0.081 mg/L (4-day average), 0.090 mg/L (1-hour average); lead – 0.0081  
 22 mg/L (4-day average), 0.22 mg/L (1-hour average); and copper 0.0031 mg/L (4-day  
 23 average), 0.0048 mg/L (1-hour average).

## 24      **V. STATEMENT OF FACTS**

25      35. Defendant Waste Management operates, the Davis Street Transfer Station, a  
 26 transfer station for commercial and municipal solid waste at 2615 Davis Street in San  
 27 Leandro, California. The Facility is engaged in the transfer of solid waste for disposal as  
 28 well as recycling operations. The Facility falls within the Standard Industrial Classification

1 ("SIC") Code 5093. The Facility covers about 53 acres, the majority of which is paved and  
 2 used for transporting and storing waste materials throughout the Facility. On information  
 3 and belief, Plaintiff alleges that there are at least seven buildings located on the property. On  
 4 information and belief, Plaintiff alleges that materials transfer is conducted both inside and  
 5 outside of these buildings.

6       36. Defendant channels and collects storm water falling on the Facility through five  
 7 storm water outfalls. Each storm drain collects storm water runoff from a particular area of  
 8 the Facility. These outfalls discharge the storm water directly to the San Francisco Bay, or  
 9 to a municipal storm drain that flows to the San Francisco Bay.

10      37. The industrial activities at the site include the transfer of solid waste from  
 11 collection vehicles to transport vehicles which move the waste to a remote landfill for  
 12 disposal, as well as recycling operations for materials such as paper, plastic, glass,  
 13 wood/yard waste, scrap metal, tires, construction debris, etc. It also includes the storage and  
 14 maintenance of trucks, tractors, and other machinery used to transfer and dispose of these  
 15 materials.

16      38. Significant activities at the site take place outside and are exposed to rainfall.  
 17 These activities include transfer, storage, and disposal of the numerous types of materials  
 18 handled by the Facility; the storage and use of vehicles and equipment for materials  
 19 handling; and the storage, handling, and disposal of waste materials. Loading and delivery  
 20 of materials occurs outside. Trucks enter and exit the Facility directly from and to a public  
 21 road. Trucks, tractors, and other machinery are the primary means of moving materials  
 22 around the Facility. The Facility's exposed areas contain large piles of a variety of materials.  
 23 Plaintiff alleges on information and belief that many of the exposed surfaces at the Facility  
 24 are unpaved and sediment and other materials are disturbed as a result of the storage and  
 25 disposal processes. These areas are exposed to storm water and storm flows due to the lack  
 26 of overhead coverage, berms, and other storm water controls.

27      39. Industrial machinery, heavy equipment and vehicles, including trucks and  
 28 tractors are operated and stored at the Facility in areas exposed to storm water flows.

1 Plaintiff is informed and believes, and thereupon alleges, that such machinery and equipment  
 2 leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are  
 3 exposed to storm water flows, and that such machinery and equipment track sediment and  
 4 other contaminants throughout the Facility.

5       40. Plaintiff is informed and believes, and thereupon alleges that the storm water  
 6 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,  
 7 and other pollutants as it flows toward the storm water drains. Storm water and any  
 8 pollutants contained in that storm water entering the drains flow directly to the San Francisco  
 9 Bay.

10      41. The management practices at the Facility are wholly inadequate to prevent the  
 11 sources of contamination described above from causing the discharge of pollutants to waters  
 12 of the United States. The Facility lacks sufficient structural controls such as grading,  
 13 berthing, roofing, containment, or drainage structures to prevent rainfall and storm water  
 14 flows from coming into contact with these and other exposed sources of contaminants. The  
 15 Facility lacks sufficient structural controls to prevent the discharge of water once  
 16 contaminated. The Facility lacks adequate storm water pollution treatment technologies to  
 17 treat storm water once contaminated.

18      42. Since at least February 2, 2004, Defendant has taken samples or arranged for  
 19 samples to be taken of storm water discharges at the Facility. The sample results were  
 20 reported in the Facility's annual reports submitted to the Regional Board. Defendant Waste  
 21 Management certified each of those annual reports pursuant to Sections A and C of the  
 22 General Permit.

23      43. Since at least February 2, 2004, the Facility has detected total suspended  
 24 solids, chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead, and  
 25 electrical conductance in storm water discharged from the Facility. Levels of these  
 26 pollutants detected in the Facility's storm water have been in excess of EPA's numeric  
 27 parameter benchmark values. Levels of these pollutants detected in the Facility's storm  
 28 water have been in excess of water quality standards established in the Basin Plan.

1       44. The levels of total suspended solids in storm water detected by the Facility  
 2 have exceeded the benchmark value for total suspended solids of 100 mg/L established by  
 3 EPA. For example, on May 19, 2006, the level of suspended solids measured by Defendant  
 4 in the Facility's discharged storm water was 1,800 mg/L. That level of total suspended  
 5 solids is 18 times the benchmark value for suspended solids established by EPA.

6       45. The levels of chemical oxygen demand in storm water detected by the Facility  
 7 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established  
 8 by EPA. For example, on May 19, 2006, the level of chemical oxygen demand measured by  
 9 Defendant in the Facility's discharged storm water was 630 mg/L. That level of chemical  
 10 oxygen demand is over five times the benchmark value for chemical oxygen demand  
 11 established by EPA.

12      46. The levels of oil & grease in storm water detected by the Facility have  
 13 exceeded the benchmark value for oil & grease of 15 mg/L established by EPA. For  
 14 example, on November 4, 2005, the level of oil & grease measured by Defendant in the  
 15 Facility's discharged storm water was 52 mg/L. That level of oil & grease is nearly three  
 16 and a half times the benchmark value for oil & grease established by EPA.

17      47. The levels of aluminum in storm water detected by the Facility have exceeded  
 18 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on May  
 19 19, 2006, the level of aluminum measured by Defendant in the Facility's discharged storm  
 20 water was 220 mg/L. That level of aluminum is over 293 times the benchmark value for  
 21 aluminum established by EPA.

22      48. The levels of copper in storm water detected by the Facility have exceeded the  
 23 benchmark value for copper of 0.0636 mg/L established by EPA. For example, on May 19,  
 24 2006, the level of copper measured by Defendant in the Facility's discharged storm water  
 25 was 1.8 mg/L. That level of copper is over 28 times the benchmark value for copper  
 26 established by EPA.

27      49. The levels of iron in storm water detected by the Facility have exceeded the  
 28 benchmark value for iron of 1.0 mg/L established by EPA. For example, on May 19, 2006,

1 the level of iron measured by Defendant in the Facility's discharged storm water was 310  
 2 mg/L. That level of iron is 310 times the benchmark value for iron established by EPA.

3       50. The levels of zinc in storm water detected by the Facility have exceeded the  
 4 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on May 19,  
 5 2006, the level of zinc measured by Defendant in the Facility's discharged storm water was  
 6 11 mg/L. That level of zinc is over 94 times the benchmark value for zinc established by  
 7 EPA.

8       51. The levels of lead in storm water detected by the Facility have exceeded the  
 9 benchmark value for lead of 0.0816 mg/L established by EPA. For example, on May 19,  
 10 2006, the level of lead measured by Defendant in the Facility's discharged storm water was  
 11 3.4 mg/L. That level of lead is nearly 42 times the benchmark value for lead established by  
 12 EPA.

13       52. The electrical conductance levels detected by the Facility in its storm water  
 14 have been greater than the numeric water quality standards applicable to electrical  
 15 conductance in California. The electrical conductance levels detected by the Facility in its  
 16 storm water have been greater than the benchmark value of 200 µmho/cm proposed by the  
 17 State Board. For example, on May 19, 2006, the electrical conductance level measured by  
 18 Defendant in the Facility's discharged storm water was 1500 µmho/cm. That electrical  
 19 conductance level is over seven times the State Board's proposed benchmark value.

20       53. On information and belief, Plaintiff alleges that Defendants have failed to  
 21 sample or monitor any storm water discharge locations during the 2004-2005 and 2006-2007  
 22 rainy seasons in violation of Sections B(4) and B(5) of the General Permit.

23       54. On information and belief, Plaintiff alleges that since at least February 2, 2004,  
 24 Defendant has failed to implement BAT and BCT at the Facility for its discharges of total  
 25 suspended solids, chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead,  
 26 and electrical conductance. Section B(3) of the General Permit requires that Defendant  
 27 implement BAT for toxic and nonconventional pollutants and BCT for conventional  
 28 pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has

1 failed to implement BAT and BCT.

2       55. On information and belief, Plaintiff alleges that since at least October 1, 1992,  
 3 Defendant has failed to implement an adequate SWPPP for the Facility. Plaintiff is informed  
 4 and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not set  
 5 forth site-specific best management practices for the Facility that are consistent with BAT or  
 6 BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the  
 7 SWPPP prepared for the Facility does not include an assessment of potential pollutant  
 8 sources, structural pollutant control measures employed by the Defendant, a list of actual and  
 9 potential areas of pollutant contact, or a description of best management practices to be  
 10 implemented at the Facility to reduce pollutant discharges. According to information  
 11 available to CSPA, Defendant's SWPPP has not been evaluated to ensure effectiveness and  
 12 revised where necessary to further reduce pollutant discharges. Plaintiff is informed and  
 13 believes, and thereupon alleges, that the SWPPP does not include each of the mandatory  
 14 elements required by Section A of the General Permit. Plaintiff is informed and believes,  
 15 and thereupon alleges, that the SWPPP does not contain an accurate map that clearly  
 16 delineates the boundaries of the Facility.

17       56. Information available to CSPA indicates that as a result of these practices,  
 18 storm water containing excessive pollutants is being discharged during rain events from the  
 19 Facility directly to the San Francisco Bay.

20       57. The San Francisco Bay has been identified by the Regional Board, State Board  
 21 and federal EPA as impaired for several pollutants, including mercury and unknown toxicity.

22       58. Plaintiff is informed and believes, and thereupon alleges, that pollutants  
 23 discharged by the Facility in its storm water are contributing to violations of water quality  
 24 standards that apply to the San Francisco Bay and its tributaries. Plaintiff is informed and  
 25 believes, and thereupon alleges, that Defendant is discharging total suspended solids,  
 26 chemical oxygen demand, oil & grease, aluminum, copper, iron, zinc, lead, electrical  
 27 conductance, and other un-monitored pollutants that are causing or contributing to  
 28 exceedances of applicable water quality standards. Defendant is contributing to violations of

water quality standards including, but not limited to, the narrative water quality standard for toxicity and turbidity and the numeric water quality standard for electrical conductance.

3       59. Plaintiff is informed and believes that Defendant failed to submit to the  
 4 Regional Board a true and complete annual report certifying compliance with the General  
 5 Permit since at least February 2, 2004. Pursuant to Sections A(9)(d), B(14), and C(9), (10)  
 6 of the General Permit, Defendant must submit an annual report, that is signed and certified  
 7 by the appropriate corporate officer, outlining the Facility's storm water controls and  
 8 certifying compliance with the General Permit. Plaintiff is informed and believes, and  
 9 thereupon alleges, that Defendant has signed incomplete annual reports that purported to  
 10 comply with the General Permit when there was significant noncompliance at the Facility.

11      60. Information available to Plaintiff indicates that Defendant has not fulfilled the  
 12 requirements set forth in the General Permit for discharges from the Facility due to the  
 13 continued discharge of polluted storm water. Plaintiff is informed and believes, and  
 14 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and  
 15 continuing.

## 16      VI. CLAIMS FOR RELIEF

### 17                   **FIRST CAUSE OF ACTION**

#### 18                   **Failure to Develop and Implement the Best Available and**                          **Best Conventional Treatment Technologies**                          **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19      61. Plaintiff realleges and incorporate Paragraphs 1-60, as if fully set forth herein.  
 20      62. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
 21 require dischargers to reduce or prevent pollutants in their storm water discharges through  
 22 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
 23 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its  
 24 discharges of suspended solids, chemical oxygen demand, oil & grease, aluminum, copper,  
 25 iron, zinc, lead, electrical conductance and other un-monitored pollutants in violation of  
 26 Effluent Limitation B(3) of the General Permit.

27      63. Each day since October 1, 1992 that Defendant has failed to develop and  
 28

1 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
2 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3        64. Defendant has been in violation of the BAT/BCT requirements every day since  
4 October 1, 1992. Defendant continues to be in violation of the BAT/BCT requirements each  
5 day that it fails to develop and fully implement BAT and BCT at the Facility.

## **SECOND CAUSE OF ACTION**

**Failure to Prepare, Implement, Review, and Update  
an Adequate Storm Water Pollution Prevention Plan  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

65. Plaintiff realleges and incorporate Paragraphs 1-64, as if fully set forth herein.

66. Section A and Provision E of the General Permit requires dischargers of storm  
water associated with industrial activity to have developed and be implementing an adequate  
SWPPP no later than October 1, 1992.

12        67. Defendant has failed to develop and implement an adequate SWPPP for the  
13 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the  
14 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials, without  
15 appropriate best management practices; the continued exposure of significant quantities of  
16 various materials to storm water flows; the continued exposure and tracking of waste resulting  
17 from the operation or maintenance of vehicles at the site; the failure to either treat storm water  
18 prior to discharge or to implement effective containment practices; and the continued  
19 discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark  
20 values.

21           68. Defendant has failed to update the Facility's SWPPP in response to the  
22 analytical results of the Facility's storm water monitoring.

23       69. Each day since October 1, 1992 that Defendant has failed to develop, implement  
24 and update an adequate SWPPP for the Facility is a separate and distinct violation of Section  
25 301(a) of the Act. 33 U.S.C. § 1311(a).

26           70.     Defendant has been in violation of the SWPPP requirements every day since  
27           October 1, 1992. Defendant continues to be in violation of the SWPPP requirements each day  
28

1 that it fails to develop and fully implement an adequate SWPPP for the Facility.

2                   **THIRD CAUSE OF ACTION**

3                   **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**  
3                   **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

4                 71. Plaintiff re-alleges and incorporates Paragraphs 1-70, inclusive, as if fully set  
5 forth herein.

6                 72. Section B of the General Permit requires dischargers of storm water associated  
7 with industrial activity to have developed and be implementing a monitoring and reporting  
8 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,  
9 1992.

10               73. Defendant has failed to develop and implement an adequate monitoring and  
11 reporting program for the Facility. Defendant's ongoing failure to develop and implement  
12 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to  
13 monitor and sample storm water discharges during the 2004-2005 and 2006-2007 rainy  
14 seasons.

15               74. Each day since October 1, 1992 that Defendant has failed to develop and  
16 implement an adequate monitoring and reporting program for the Facility in violation of the  
17 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
18 1311(a). The absence of requisite monitoring and analytical results are ongoing and  
19 continuous violations of the Act.

20                   **FOURTH CAUSE OF ACTION**

21                   **Discharges of Contaminated Storm Water**  
21                   **in Violation of Permit Conditions and the Act**  
22                   **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

23                 75. Plaintiff re-alleges and incorporates Paragraphs 1-74, inclusive, as if fully set  
24 forth herein.

25                 76. Discharge Prohibition A(2) of the General Permit requires that storm water  
26 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
27 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
28 General Permit require that storm water discharges and authorized non-storm water discharges

1 shall not adversely impact human health or the environment, and shall not cause or contribute  
 2 to a violation of any water quality standards contained in a Statewide Water Quality Control  
 3 Plan or the applicable Regional Board's Basin Plan.

4       77. Plaintiff is informed and believes, and thereupon alleges, that since at least May  
 5 23, 2003, Defendant has been discharging polluted storm water from the Facility directly to  
 6 the San Francisco Bay, in violation of the Discharge Prohibition A(2) of the General Permit.

7       78. During every rain event, rainwater flows freely over exposed materials, waste  
 8 products, and other accumulated pollutants at the Facility, becoming contaminated with these  
 9 pollutants. The rainwater then flows untreated from the Facility into channels or storm drains.  
 10 This contaminated storm water flows into the San Francisco Bay.

11       79. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
 12 contaminated storm water are causing pollution and contamination of the waters of the United  
 13 States in violation of Discharge Prohibition A(2) of the General Permit.

14       80. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
 15 of contaminated storm water are adversely affecting human health and the environment in  
 16 violation of Receiving Water Limitation C(1) of the General Permit.

17       81. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
 18 contaminated storm water are contributing to the violation of the applicable water quality  
 19 standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's  
 20 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

21       82. Every day since at least May 23, 2003, that Defendant has discharged and  
 22 continues to discharge polluted storm water from the Facility in violation of the General Permit  
 23 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
 24 violations are ongoing and continuous.

#### **FIFTH CAUSE OF ACTION**

##### **False Certification of Compliance In Annual Report (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

27       83. Plaintiff realleges and incorporate Paragraphs 1-82, as if fully set forth herein.

28       84. Defendant has falsely certified compliance with the General Permit in each of

1 the annual reports submitted to the Regional Board since at least June 2004.

2       85. Each day since at least June 29, 2004 that Defendant has falsely certified  
3 compliance with the General Permit is a separate and distinct violation of the General Permit  
4 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of  
5 the General Permit's certification requirement each day that it maintains its false certification  
6 of its compliance with the General Permit.

7 **VII. RELIEF REQUESTED**

8       Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- 9           a. Declare Defendant to have violated and to be in violation of the Act as  
10          alleged herein;
- 11           b. Enjoin Defendant from discharging polluted storm water from the Facility  
12          unless authorized by the Permit;
- 13           c. Enjoin Defendant from further violating the substantive and procedural  
14          requirements of the Permit;
- 15           d. Order Defendant to immediately implement storm water pollution control  
16          and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
17          pollutants in the Facility's storm water from contributing to violations of any water quality  
18          standards;
- 19           e. Order Defendant to comply with the Permit's monitoring and reporting  
20          requirements, including ordering supplemental monitoring to compensate for past monitoring  
21          violations;
- 22           f. Order Defendant to prepare a SWPPP consistent with the Permit's  
23          requirements and implement procedures to regularly review and update the SWPPP;
- 24           g. Order Defendant to provide Plaintiff with reports documenting the quality  
25          and quantity of their discharges to waters of the United States and their efforts to comply with  
26          the Act and the Court's orders;
- 27           h. Order Defendant to pay civil penalties of \$27,500 per day per violation for  
28          all violations occurring before March 15, 2004, and \$32,500 per day per violation for all

1 violations occurring after August 28, 2002, for each violation of the Act pursuant to Sections  
2 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

3 i. Order Defendant to take appropriate actions to restore the quality of waters  
4 impaired or adversely affected by their activities;

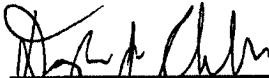
5 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
6 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

7 k. Award any such other and further relief as this Court may deem appropriate.

8  
9 Dated: July 21, 2008

Respectfully submitted,

10 LOZEAU DRURY LLP

11 By: 

12 Douglas J. Chermak  
13 Attorney for Plaintiff  
CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

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# EXHIBIT A

## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltkeep@aol.com

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

April 16, 2008

Jack Isola, Manager  
Davis Street Station for Material Recycling and Transfer  
Waste Management of Alameda County, Inc.  
2615 Davis Street  
San Leandro, CA 94577

Stuart Clark, President  
Waste Management of Alameda County, Inc.  
172 98<sup>th</sup> Ave  
Oakland, CA 94603

Waste Management of California, Inc.  
1001 Fannin, Suite 4000  
Houston, TX 77002

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act**

Dear Mr. Isola and Mr. Clark:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at the Davis Street Station for Material Recycling and Transfer ("Facility") located at 2615 Davis Street in San Leandro, California. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Davis Street Station").

This letter addresses Davis Street Station's unlawful discharge of pollutants from the Facility into San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 201I002422. The Facility is engaged in ongoing violations of the substantive and

Jack Isola  
Davis Street Station for Material Recycling and Transfer  
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procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Davis Street Station is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Waste Management of Alameda County, Inc., Waste Management of California, Inc., Jack Isola, and Stuart Clark under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

## I. Background.

On November 4, 1997, Davis Street Station filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). Davis Street Station certifies that the Facility is classified under SIC code 5093 ("processing of scrap material") and under SIC code 4212 ("local trucking without storage"). The Facility collects and discharges storm water from its 53-acre industrial site through at least five outfalls that discharge into the San Francisco Bay. The Regional Board has identified waters of San Francisco Bay as failing to meet applicable water quality standards for PCBs, selenium, exotic species, dioxins, pesticides, and mercury. See [http://www.waterboards.ca.gov/tmdl/docs/303dlists2006/final/r2\\_final303dlist.pdf](http://www.waterboards.ca.gov/tmdl/docs/303dlists2006/final/r2_final303dlist.pdf).

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the San Francisco Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. See [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/basin\\_plan/docs/basin\\_plan07.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf). The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or

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Davis Street Station for Material Recycling and Transfer  
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muddy water from industrial areas, impairs people's use of the Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and lead of 0.0081 mg/L (4 day average) and 0.21 mg/L (1hour average). *Id.* at Table 3-3. EPA has adopted numeric water quality standards for copper of .0031 mg/L (4-day average) and .0048 mg/L (1-hour average), for lead of .210 mg/L (4-day average) and .0081 mg/L (1-hour average), and for zinc of .090 mg/L (4-day average) and .081 mg/L (1-hour average). 65 Fed.Reg. 31712 (May 18, 2000).

The U.S. Environmental Protection Agency (“EPA”) has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Davis Street Station: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, aluminum – .75 mg/L, zinc – 0.117 mg/L, iron – 1 mg/L, copper – .0636 mg/L, lead – .0816 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200  $\mu$ mho/cm).

## II. Alleged Violations of the NPDES Permit.

### A. Discharges in Violation of the Permit.

Davis Street Station has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand

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 Davis Street Station for Material Recycling and Transfer  
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("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Davis Street Station has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, oil & grease, chemical oxygen demand, aluminum, copper, iron, lead, zinc and other pollutants in violation of the General Permit. Davis Street Station's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
5/19/2006	Total Suspended Solids	150 mg/L	100 mg/L	Northwest Outfall
5/19/2006	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	Northwest Outfall
5/19/2006	Chemical Oxygen Demand	630 mg/L	120 mg/L	Northwest Outfall
5/19/2006	Aluminum	4.5 mg/L	0.75 mg/L	Northwest Outfall
5/19/2006	Copper	0.07 mg/L	0.0636 mg/L	Northwest Outfall
5/19/2006	Iron	6.9 mg/L	1.0 mg/L	Northwest Outfall
5/19/2006	Zinc	0.44 mg/L	0.117 mg/L	Northwest Outfall

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5/19/2006	Total Suspended Solids	670 mg/L	100 mg/L	Facility Entrance
5/19/2006	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	Facility Entrance
5/19/2006	Chemical Oxygen Demand	210 mg/L	120 mg/L	Facility Entrance
5/19/2006	Aluminum	11 mg/L	0.75 mg/L	Facility Entrance
5/19/2006	Copper	0.11 mg/L	0.0636 mg/L	Facility Entrance
5/19/2006	Iron	15 mg/L	1.0 mg/L	Facility Entrance
5/19/2006	Lead	0.18 mg/L	0.0816 mg/L	Facility Entrance
5/19/2006	Zinc	0.71 mg/L	0.117 mg/L	Facility Entrance
5/19/2006	Total Suspended Solids	1,800 mg/L	100 mg/L	Northeast Outfall
5/19/2006	Specific Conductivity	1,500 µmho/cm	200 µmho/cm (proposed)	Northeast Outfall
5/19/2006	Chemical Oxygen Demand	310 mg/L	120 mg/L	Northeast Outfall
5/19/2006	Aluminum	220 mg/L	0.75 mg/L	Northeast Outfall
5/19/2006	Copper	1.8 mg/L	0.0636 mg/L	Northeast Outfall
5/19/2006	Iron	310 mg/L	1.0 mg/L	Northeast Outfall
5/19/2006	Lead	3.4 mg/L	0.0816 mg/L	Northeast Outfall
5/19/2006	Zinc	11 mg/L	0.117 mg/L	Northeast Outfall
5/19/2006	Total Suspended Solids	1,500 mg/L	100 mg/L	Southeast Outfall
5/19/2006	Specific Conductivity	1,400 µmho/cm	200 µmho/cm (proposed)	Southeast Outfall
5/19/2006	Chemical Oxygen Demand	210 mg/L	120 mg/L	Southeast Outfall
5/19/2006	Aluminum	26 mg/L	0.75 mg/L	Southeast Outfall
5/19/2006	Copper	0.1 mg/L	0.0636 mg/L	Southeast Outfall
5/19/2006	Iron	37 mg/L	1.0 mg/L	Southeast Outfall
5/19/2006	Lead	0.18 mg/L	0.0816 mg/L	Southeast Outfall
5/19/2006	Zinc	0.58 mg/L	0.117 mg/L	Southeast Outfall
11/4/2005	Total Suspended Solids	500 mg/L	100 mg/L	Facility Entrance
11/4/2005	Specific Conductivity	990 µmho/cm	200 µmho/cm (proposed)	Facility Entrance
11/4/2005	Oil & Grease	52 mg/L	15 mg/L	Facility Entrance
11/4/2005	Chemical Oxygen Demand	280 mg/L	120 mg/L	Facility Entrance
11/4/2005	Aluminum	26 mg/L	0.75 mg/L	Facility Entrance

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11/4/2005	Copper	0.17 mg/L	0.0636 mg/L	Facility Entrance
11/4/2005	Iron	39 mg/L	1.0 mg/L	Facility Entrance
11/4/2005	Lead	0.32 mg/L	0.0816 mg/L	Facility Entrance
11/4/2005	Zinc	1.3 mg/L	0.117 mg/L	Facility Entrance
11/4/2005	Total Suspended Solids	200 mg/L	100 mg/L	Recycling Center
11/4/2005	Specific Conductivity	1,200 $\mu\text{mho}/\text{cm}$ (proposed)	200 $\mu\text{mho}/\text{cm}$ (proposed)	Recycling Center
11/4/2005	Oil & Grease	43 mg/L	15 mg/L	Recycling Center
11/4/2005	Chemical Oxygen Demand	1,100 mg/L	120 mg/L	Recycling Center
11/4/2005	Aluminum	4.4 mg/L	0.75 mg/L	Recycling Center
11/4/2005	Copper	0.077 mg/L	0.0636 mg/L	Recycling Center
11/4/2005	Iron	6.9 mg/L	1.0 mg/L	Recycling Center
11/4/2005	Lead	0.086 mg/L	0.0816 mg/L	Recycling Center
11/4/2005	Zinc	0.67 mg/L	0.117 mg/L	Recycling Center
11/4/2005	Total Suspended Solids	840 mg/L	100 mg/L	Northeast Outfall
11/4/2005	Specific Conductivity	2,700 $\mu\text{mho}/\text{cm}$ (proposed)	200 $\mu\text{mho}/\text{cm}$ (proposed)	Northeast Outfall
11/4/2005	Oil & Grease	78 mg/L	15 mg/L	Northeast Outfall
11/4/2005	Chemical Oxygen Demand	1,000 mg/L	120 mg/L	Northeast Outfall
11/4/2005	Aluminum	20 mg/L	0.75 mg/L	Northeast Outfall
11/4/2005	Copper	0.26 mg/L	0.0636 mg/L	Northeast Outfall
11/4/2005	Iron	29 mg/L	1.0 mg/L	Northeast Outfall
11/4/2005	Lead	0.36 mg/L	0.0816 mg/L	Northeast Outfall
11/4/2005	Zinc	1.5 mg/L	0.117 mg/L	Northeast Outfall
11/4/2005	pH	1.3 pH units	6.0 – 9.0 pH units	Southeast Outfall
11/4/2005	Total Suspended Solids	520 mg/L	100 mg/L	Southeast Outfall
11/4/2005	Specific Conductivity	22,000 $\mu\text{mho}/\text{cm}$ (proposed)	200 $\mu\text{mho}/\text{cm}$ (proposed)	Southeast Outfall
11/4/2005	Oil & Grease	40 mg/L	15 mg/L	Southeast Outfall
11/4/2005	Chemical Oxygen Demand	220 mg/L	120 mg/L	Southeast Outfall
11/4/2005	Aluminum	41 mg/L	0.75 mg/L	Southeast Outfall
11/4/2005	Copper	0.26 mg/L	0.0636 mg/L	Southeast Outfall
11/4/2005	Iron	58 mg/L	1.0 mg/L	Southeast Outfall
11/4/2005	Lead	0.72 mg/L	0.0816 mg/L	Southeast Outfall
11/4/2005	Zinc	2.3 mg/L	0.117 mg/L	Southeast Outfall

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3/25/2004	Total Suspended Solids	570 mg/L	100 mg/L	North Central Out Fall
3/25/2004	Specific Conductivity	1,200 $\mu\text{mho}/\text{cm}$ $\mu\text{mho}/\text{cm}$ (proposed)	200 $\mu\text{mho}/\text{cm}$ (proposed)	North Central Out Fall
3/25/2004	Chemical Oxygen Demand	630 mg/L	120 mg/L	North Central Out Fall
3/25/2004	Aluminum	12 mg/L	0.75 mg/L	North Central Out Fall
3/25/2004	Copper	0.14 mg/L	0.0636 mg/L	North Central Out Fall
3/25/2004	Iron	22 mg/L	1.0 mg/L	North Central Out Fall
3/25/2004	Lead	0.14 mg/L	0.0816 mg/L	North Central Out Fall
3/25/2004	Zinc	1.1 mg/L	0.117 mg/L	North Central Out Fall
3/25/2004	Total Suspended Solids	200 mg/L	100 mg/L	North East Out Fall
3/25/2004	Chemical Oxygen Demand	150 mg/L	120 mg/L	North East Out Fall
3/25/2004	Aluminum	6.8 mg/L	0.75 mg/L	North East Out Fall
3/25/2004	Copper	0.066 mg/L	0.0636 mg/L	Out Fall
3/25/2004	Iron	11 mg/L	1.0 mg/L	North East Out Fall
3/25/2004	Zinc	0.53 mg/L	0.117 mg/L	North East Out Fall
2/2/2004	Total Suspended Solids	1,900 mg/L	100 mg/L	North Central Out Fall
2/2/2004	Oil & Grease	26 mg/L	15 mg/L	North Central Out Fall
2/2/2004	Chemical Oxygen Demand	140 mg/L	120 mg/L	North Central Out Fall
2/2/2004	Aluminum	13 mg/L	0.75 mg/L	North Central Out Fall
2/2/2004	Copper	0.11 mg/L	0.0636 mg/L	North Central Out Fall
2/2/2004	Iron	25 mg/L	1.0 mg/L	North Central Out Fall
2/2/2004	Lead	0.16 mg/L	0.0816 mg/L	North Central Out Fall
2/2/2004	Zinc	0.71 mg/L	0.117 mg/L	North Central Out Fall

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2/2/2004	Total Suspended Solids	680 mg/L	100 mg/L	North East Out Fall
2/2/2004	Specific Conductivity	340 $\mu\text{mho}/\text{cm}$	200 $\mu\text{mho}/\text{cm}$ (proposed)	North East Out Fall
2/2/2004	Aluminum	24 mg/L	0.75 mg/L	North East Out Fall
2/2/2004	Copper	0.16 mg/L	0.0636 mg/L	North East Out Fall
2/2/2004	Iron	40 mg/L	1.0 mg/L	North East Out Fall
2/2/2004	Lead	0.17 mg/L	0.0816 mg/L	North East Out Fall
2/2/2004	Zinc	0.95 mg/L	0.117 mg/L	North East Out Fall

CSPA's investigation, including its review of Davis Street Station's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Davis Street Station has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, O&G, COD, aluminum, copper, iron, lead, zinc and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Davis Street Station was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Davis Street Station is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since April 16, 2003, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Davis Street Station has discharged storm water containing impermissible levels of TSS, specific conductivity, O&G, COD, aluminum, copper, iron, lead, zinc in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Street Station is subject to penalties for violations of the General Permit and the Act since April 16, 2003.

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***B. Failure to Identify and Control Non-Storm Water Discharges***

The General Permit requires that facility operators “investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system. All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.” Section A(6)(a)(v).

The General Permit authorizes certain non-storm water discharges providing that the non-storm water discharges are in compliance with Regional Board requirements; that the non-storm water discharges are in compliance with local agency ordinances and/or requirements; that BMPs are included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges; that the non-storm water discharges do not contain significant quantities of pollutants; and that the monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective (Special Conditions D). Section B(3) of the General Permit requires dischargers to conduct visual observations of all drainage areas for the presence of non-storm water discharges, to observe the non-storm water discharges, and maintain records of such observations.

CSPA, on information and belief, alleges that the Facility discharges unauthorized non-storm water at the Facility, including dust suppression water and wash water. On information and belief, CSPA further alleges that the Facility has failed to identify and control non-storm water discharges in violation of Sections A(6)(a)(v) and B(3) and D of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Street Station is subject to penalties for violations of the General Permit and the Act since April 16, 2003.

***C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.***

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices

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("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Davis Street Station's Annual Reports indicate that Davis Street Station has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Davis Street Station has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Davis Street Station has been in continuous violation of Section A and Provision E(2) of the General Permit every day since April 16, 2003 at the very latest, and will continue to be in violation every day that Davis Street Station fails to prepare, implement, review, and update an effective SWPPP. Davis Street Station is subject to penalties for violations of the Order and the Act occurring since April 16, 2003.

**D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program**

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

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The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. In addition, the Facility failed to sample or monitor any storm water discharge locations during the 2006-2007 and 2004-2005 rainy seasons based on a general claim that no qualifying events occurred at the Facility. To the extent the storm water data collected by Davis Transfer Station is not representative of the quality of the Facility's various storm water discharges or the Facility failed to monitor all qualifying storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Street Station is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since April 16, 2003.

***E. Failure to File True and Correct Annual Reports.***

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, Davis Street Station and its agent, Jack Isola, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Davis Street Station has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Davis Street Station failed to submit a complete or correct report and every time Davis Street Station or its agents falsely purported to comply with the Act. Davis Street Station is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 16, 2003.

**IV. Persons Responsible for the Violations.**

CSPA puts Waste Management of Alameda County, Inc., Waste Management of California, Inc., Jack Isola, and Stuart Clark on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Waste Management of Alameda County, Inc., Waste Management of California, Inc., Jack Isola, and Stuart Clark on notice that it intends to include those persons in this action.

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**V. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director;  
California Sportfishing Protection Alliance,  
3536 Rainier Avenue,  
Stockton, CA 95204  
Tel. (209) 464-5067

**VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau  
Douglas J. Chermak  
Law Office of Michael R. Lozeau  
1516 Oak Street, Suite 216  
Alameda, California 94501  
Tel. (510) 749-9102  
mrlozeau@lozeaulaw.com

Andrew L. Packard  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
Tel. (707) 763-7227  
andrew@packardlawoffices.com

**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Davis Street Station to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Davis Street Station and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days

so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

cc: CT Corporation, Agent of Service of Process for Waste Management of Alameda County, Inc. (C0091817) and Waste Management of California, Inc. (C0266196)

**SERVICE LIST**

Steve Johnson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Michael Mukasey, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Wayne Nastri, Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**ATTACHMENT A**  
**Rain Dates, Davis Street Station, San Leandro, California**

April	16	2003	January	02	2004	November	09	2004
April	21	2003	January	06	2004	November	10	2004
April	22	2003	January	08	2004	November	11	2004
April	24	2003	January	08	2004	November	13	2004
April	25	2003	January	09	2004	November	27	2004
April	27	2003	January	14	2004	December	06	2004
April	28	2003	January	23	2004	December	07	2004
April	29	2003	January	24	2004	December	08	2004
May	02	2003	January	26	2004	December	10	2004
May	03	2003	January	27	2004	December	26	2004
May	06	2003	January	30	2004	December	27	2004
May	07	2003	February	01	2004	December	28	2004
May	08	2003	February	02	2004	December	29	2004
May	30	2003	February	03	2004	December	30	2004
July	24	2003	February	06	2004	December	31	2004
September	03	2003	February	13	2004	January	01	2005
November	02	2003	February	15	2004	January	02	2005
November	03	2003	February	16	2004	January	03	2005
November	06	2003	February	17	2004	January	04	2005
November	07	2003	February	18	2004	January	05	2005
November	08	2003	February	20	2004	January	06	2005
November	09	2003	February	21	2004	January	07	2005
November	14	2003	February	22	2004	January	08	2005
November	15	2003	February	24	2004	January	09	2005
November	17	2003	February	25	2004	January	10	2005
November	30	2003	February	26	2004	January	11	2005
December	01	2003	February	27	2004	January	12	2005
December	02	2003	March	01	2004	January	13	2005
December	04	2003	March	25	2004	January	16	2005
December	05	2003	March	27	2004	January	17	2005
December	06	2003	April	18	2004	January	18	2005
December	07	2003	April	19	2004	January	19	2005
December	09	2003	April	20	2004	January	20	2005
December	10	2003	April	21	2004	January	21	2005
December	12	2003	May	28	2004	January	22	2005
December	13	2003	August	23	2004	January	23	2005
December	14	2003	August	24	2004	January	24	2005
December	19	2003	September	19	2004	January	25	2005
December	20	2003	October	17	2004	January	26	2005
December	21	2003	October	19	2004	January	27	2005
December	23	2003	October	20	2004	January	28	2005
December	24	2003	October	23	2004	February	07	2005
December	25	2003	October	25	2004	February	11	2005
December	28	2003	October	26	2004	February	14	2005
December	29	2003	November	03	2004	February	15	2005
January	01	2004	November	04	2004	February	16	2005

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**ATTACHMENT A**  
**Rain Dates, Davis Street Station, San Leandro, California**

February	17	2005	November	04	2005	March	21	2006
February	18	2005	November	07	2005	March	11	2006
February	19	2005	November	08	2005	March	13	2006
February	20	2005	November	09	2005	March	30	2006
February	21	2005	November	25	2005	March	04	2006
February	26	2005	November	28	2005	March	10	2006
February	27	2005	November	29	2005	March	28	2006
February	28	2005	December	01	2005	March	07	2006
March	01	2005	December	02	2005	March	01	2006
March	02	2005	December	07	2005	March	02	2006
March	03	2005	December	17	2005	March	09	2006
March	04	2005	December	18	2005	March	27	2006
March	09	2005	December	19	2005	March	12	2006
March	18	2005	December	20	2005	March	03	2006
March	19	2005	December	21	2005	March	16	2006
March	20	2005	December	22	2005	March	31	2006
March	21	2005	December	25	2005	March	06	2006
March	22	2005	December	26	2005	March	24	2006
March	23	2005	December	27	2005	March	14	2006
March	27	2005	December	28	2005	March	20	2006
March	28	2005	December	29	2005	March	25	2006
March	29	2005	December	30	2005	March	05	2006
April	03	2005	December	31	2005	April	01	2006
April	04	2005	January	06	2006	April	17	2006
April	07	2005	January	08	2006	April	15	2006
April	08	2005	January	13	2006	April	08	2006
April	22	2005	January	21	2006	April	10	2006
April	23	2005	January	03	2006	April	09	2006
April	27	2005	January	18	2006	April	05	2006
April	28	2005	January	11	2006	April	03	2006
April	29	2005	January	27	2006	April	07	2006
May	04	2005	January	07	2006	April	04	2006
May	05	2005	January	01	2006	April	12	2006
May	08	2005	January	17	2006	April	02	2006
May	09	2005	January	30	2006	April	11	2006
May	18	2005	January	28	2006	April	16	2006
May	19	2005	January	02	2006	May	24	2006
June	08	2005	January	14	2006	May	19	2006
June	09	2005	February	17	2006	May	21	2006
June	16	2005	February	04	2006	June	28	2006
June	17	2005	February	02	2006	July	20	2006
June	18	2005	February	26	2006	July	06	2006
October	14	2005	February	01	2006	July	21	2006
October	15	2005	February	27	2006	August	02	2006
October	26	2005	February	28	2006	October	05	2006
October	29	2005	March	29	2006	October	06	2006
November	03	2005	March	17	2006	October	17	2006

**ATTACHMENT A**  
**Rain Dates, Davis Street Station, San Leandro, California**

November 02	2006	April 14	2007	December 06	2007
November 03	2006	April 19	2007	December 07	2007
November 04	2006	April 20	2007	December 17	2007
November 09	2006	April 21	2007	December 18	2007
November 11	2006	April 22	2007	December 19	2007
November 12	2006	April 27	2007	December 20	2007
November 13	2006	May 02	2007	December 27	2007
November 14	2006	May 03	2007	December 28	2007
November 15	2006	May 04	2007	December 29	2007
November 23	2006	May 10	2007	January 03	2008
November 27	2006	May 11	2007	January 04	2008
November 28	2006	May 14	2007	January 05	2008
December 09	2006	May 15	2007	January 06	2008
December 10	2006	May 16	2007	January 07	2008
December 11	2006	May 17	2007	January 08	2008
December 12	2006	May 20	2007	January 09	2008
December 13	2006	May 21	2007	January 10	2008
December 14	2006	May 23	2007	January 21	2008
December 15	2006	May 24	2007	January 22	2008
December 16	2006	May 27	2007	January 23	2008
December 22	2006	May 29	2007	January 24	2008
December 27	2006	May 30	2007	January 25	2008
January 04	2007	May 31	2007	January 26	2008
January 05	2007	June 01	2007	January 27	2008
January 17	2007	June 03	2007	January 28	2008
January 26	2007	June 04	2007	January 29	2008
January 27	2007	June 06	2007	January 30	2008
January 28	2007	June 08	2007	January 31	2008
February 07	2007	June 10	2007	February 02	2008
February 08	2007	June 13	2007	February 03	2008
February 09	2007	June 14	2007	February 19	2008
February 10	2007	June 15	2007	February 20	2008
February 11	2007	June 19	2007	February 21	2008
February 12	2007	June 21	2007	February 22	2008
February 21	2007	June 22	2007	February 23	2008
February 22	2007	September 22	2007	February 24	2008
February 23	2007	October 09	2007	March 13	2008
February 24	2007	October 10	2007	March 14	2008
February 25	2007	October 12	2007	March 15	2008
February 26	2007	October 15	2007	March 28	2008
February 27	2007	October 16	2007	March 29	2008
February 28	2007	October 17	2007		
March 20	2007	October 19	2007		
March 26	2007	November 05	2007		
April 07	2007	November 10	2007		
April 09	2007	November 11	2007		
April 11	2007	December 04	2007		